

[Attorneys Listed on Signature Page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

VASUDEVAN SOFTWARE, INC.,

Case No. 3:11-06637-RS

Plaintiff,

STIPULATED PROTECTIVE ORDER

vs.

MICROSTRATEGY INC.

Defendant.

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of

1 Civil Procedure 26(c).

2 2.3 Counsel (without qualifier): Outside Counsel of Record (as well as their support
3 staff).

4 2.4 Designating Party: a Party or Non-Party that designates information or items that it
5 produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
7 CODE.”

8 2.5 Disclosure or Discovery Material: all items or information, regardless of the
9 medium or manner in which it is generated, stored, or maintained (including, among other things,
10 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
11 responses to discovery in this matter.

12 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
13 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as
14 a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s
15 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or
16 of a Party’s competitor.

17 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
18 Items: extremely confidential, proprietary, or sensitive “CONFIDENTIAL Information or Items,”
19 where the Producing Party reasonably believes that disclosure of which to another Party or Non-
20 Party would create a substantial risk of economic harm or significant competitive disadvantage to
21 the Producing Party.

22 2.8 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely
23 sensitive “Confidential Information or Items” of Source Code, where the Producing Party
24 reasonably believes that disclosure of which to another Party or Non-Party would create a
25 substantial risk of economic harm or significant competitive disadvantage to the Producing Party.

26 2.9 House Counsel: attorneys who are employees of a party to this action. House
27 Counsel does not include Outside Counsel of Record or any other outside counsel.

28 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal

entity not named as a Party to this action.

2.11 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.12 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.14 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.15 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as “HIGHLY CONFIDENTIAL – SOURCE CODE.”

2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.17 Source Code: material representing or including computer code and associated comments and revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in detail the algorithms or structure of software or hardware designs.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public

1 record through trial or otherwise; and (b) any information known to the Receiving Party prior to the
2 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
3 information lawfully and under no obligation of confidentiality to the Designating Party. Any use
4 of Protected Material at trial shall be governed by a separate agreement or order.

5 4. DURATION

6 Even after final disposition of this litigation, the confidentiality obligations imposed by this
7 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
8 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
9 defenses in this action, with or without prejudice; and (2) final judgment herein after the
10 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
11 including the time limits for filing any motions or applications for extension of time pursuant to
12 applicable law.

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
15 Non-Party that designates information or items for protection under this Order must take care to
16 limit any such designation to specific material that qualifies under the appropriate standards. To the
17 extent it is practical to do so, the Designating Party must designate for protection only those parts
18 of material, documents, items, or oral or written communications that qualify – so that other
19 portions of the material, documents, items, or communications for which protection is not
20 warranted are not swept unjustifiably within the ambit of this Order.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
22 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
23 encumber or retard the case development process or to impose unnecessary expenses and burdens
24 on other parties) expose the Designating Party to sanctions.

25 If it comes to a Designating Party's attention that information or items that it designated for
26 protection do not qualify for protection at all or do not qualify for the level of protection initially
27 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the
28 mistaken designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
2 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
3 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
4 designated before the material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (e.g., paper or electronic documents, but
7 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
8 affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
9 ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page or computer-readable
10 medium that contains protected material.

11 A Party or Non-Party that makes original documents or materials available for inspection
12 need not designate them for protection until after the inspecting Party has indicated which material
13 it would like copied and produced. During the inspection and before the designation, all of the
14 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
15 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
16 copied and produced, the Producing Party must determine which documents, or portions thereof,
17 qualify for protection under this Order. Then, before producing the specified documents, the
18 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
20 CODE) to each page that contains Protected Material.

21 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
22 Designating Party identify on the record, before the close of the deposition, hearing, or other
23 proceeding, all protected testimony and specify the level of protection being asserted. When it is
24 impractical to identify separately each portion of testimony that is entitled to protection and it
25 appears that substantial portions of the testimony may qualify for protection, the Designating Party
26 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
27 to have up to 21 days to identify the specific portions of the testimony as to which protection is
28 sought and to specify the level of protection being asserted. Only those portions of the testimony

1 that are appropriately designated for protection within the 21 days shall be covered by the
2 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at
3 the deposition or up to 21 days afterwards if that period is properly invoked, that the entire
4 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
5 ATTORNEYS’ EYES ONLY.”

6 Parties intending to use or otherwise disclose Protected Material shall give the other parties
7 notice if they reasonably expect a deposition, hearing or other proceeding to include Protected
8 Material so that the other parties can ensure that only authorized individuals who have signed the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those proceedings. The
10 use of a document as an exhibit at a deposition shall not in any way affect its designation as
11 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

12 Transcripts containing Protected Material shall have an obvious legend on the title page that
13 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
14 (including line numbers as appropriate) that have been designated as Protected Material and the
15 level of protection being asserted by the Designating Party. The Designating Party shall inform the
16 court reporter of these requirements. Any transcript that is prepared before the expiration of the 21-
17 day period for designation of the final transcript shall be treated during that period as if it had been
18 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
19 otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually
20 designated. Any rough transcript shall be treated pursuant to the designations for the final
21 transcript.

22 (c) for information produced in some form other than documentary and for any
23 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
24 container or containers in which the information or item is stored the legend “CONFIDENTIAL”
25 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
26 – SOURCE CODE.” If only a portion or portions of the information or item warrant protection, the
27 Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the
28 level of protection being asserted.

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the Designating Party's
3 right to secure protection under this Order for such material. Upon timely correction of a
4 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
5 in accordance with the provisions of this Order.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
8 confidentiality at any time, including a challenge that only a portion or portions of designated
9 material qualifies for protection. Unless a prompt challenge to a Designating Party's confidentiality
10 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
11 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
12 challenge a confidentiality designation by electing not to mount a challenge promptly after the
13 original designation is disclosed.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
15 by providing written notice of each designation it is challenging and describing the basis for each
16 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
17 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
18 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
19 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
20 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
21 Party must explain the basis for its belief that the confidentiality designation was not proper and
22 must give the Designating Party an opportunity to review the designated material, to reconsider the
23 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
24 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
25 has engaged in this meet and confer process first or establishes that the Designating Party is
26 unwilling to participate in the meet and confer process in a timely manner.

27 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
28 intervention, the Challenging Party, after considering the justification offered by the Designating

Party, may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable) within 28 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. The motion shall identify the challenged material and set forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by the Challenging Party to make such a motion including the required declaration within 28 days (or 14 days, if applicable) shall automatically waive the right of the Challenging Party to contest the confidentiality designation. In addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if there is good cause for doing so, including a challenge to the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. All parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
2 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
3 information or item designated “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
6 information for this litigation;

7 (b) the officers, directors, and employees (including House Counsel) of the
8 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
9 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (c) experts (as defined in this Order) of the Receiving Party (1) to whom disclosure
11 is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and
12 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph
13 7.4(a), below, have been followed, and their regularly employed support personnel (such as
14 administrative assistants, secretaries, clerical and administrative staff) as necessarily incident to the
15 Litigation;

16 (d) the Court and its personnel;

17 (e) court reporters and their staff, professional jury or trial consultants, mock jurors
18 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
19 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
21 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
22 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
23 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
24 bound by the court reporter and may not be disclosed to anyone except as permitted under this
25 Stipulated Protective Order;

26 (g) during depositions, current employees of the Producing Party that produced the
27 documents or information;

28 (h) the author or recipient of a document containing the information or a custodian

1 or other person who otherwise possessed or knew the information.

2 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and
3 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered
4 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
5 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
6 “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

7 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
8 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
9 information for this litigation;

10 (b) to the extent disclosure is limited to annual revenue by product and annual unit
11 sales by product, Helen Vasudevan, but (1) only upon designation of the information as subject to
12 this Section in writing by the Producing Party, and (2) only after Helen Vasudevan has signed the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A)¹;

14 (c) experts of the Receiving Party (1) to whom disclosure is reasonably necessary
15 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound”
16 (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a), below, have been
17 followed, and their regularly employed support personnel (such as administrative assistants,
18 secretaries, clerical and administrative staff) as necessarily incident to the Litigation;

19 (d) the Court and its personnel;

20 (e) court reporters and their staff, professional jury or trial consultants, mock jurors
21 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
22 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

23 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
24 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
25 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed

26
27 ¹ To preserve the confidentiality of the financial information described in this paragraph, MicroStrategy may produce this
28 information as a protected electronic or paper document that cannot be copied.

1 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
 2 bound by the court reporter and may not be disclosed to anyone except as permitted under this
 3 Stipulated Protective Order;

4 (g) during depositions, current employees of the Producing Party that produced the
 5 documents or information.

6 (h) the author or recipient of a document containing the information or a custodian
 7 or other person who otherwise possessed or knew the information.

8 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
 9 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information
 10 or Items to Experts.

11 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating
 12 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item
 13 produced by another Party or Non-Party that has been designated “CONFIDENTIAL,” “HIGHLY
 14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
 15 CODE” pursuant to paragraphs 7.2(c) and 7.3(c) first must make a written request to the
 16 Designating Party that (1) sets forth the full name of the Expert and the city and state of his or her
 17 primary residence, (2) attaches a copy of the Expert’s current resume, (3) identifies the Expert’s
 18 current employer(s), (4) identifies each person or entity from whom the Expert has received
 19 compensation or funding for work in his or her areas of expertise or to whom the expert has
 20 provided professional services, including in connection with a litigation, at any time during the
 21 preceding five years,² and (5) identifies (by name and number of the case, filing date, and location
 22 of court) any litigation in connection with which the Expert has offered expert testimony, including
 23 through a declaration, report, or testimony at a deposition or trial, during the preceding five years.

24 (b) A Party that makes a request and provides the information specified in the

25 _____
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 27 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should
 28 provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party
 seeking to disclose the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

1 preceding respective paragraphs may disclose the subject Protected Material to the identified
2 Expert unless, within seven court days of delivering the request, the Party receives a written
3 objection from the Designating Party. Any such objection must set forth in detail the grounds on
4 which it is based.

5 (c) A Party that receives a timely written objection must meet and confer with the
6 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
7 within seven court days of the written objection. If no agreement is reached, the Party seeking to
8 make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in
9 compliance with Civil Local Rule 79-5 and General Order 62, if applicable) seeking permission
10 from the court to do so. Any such motion must describe the circumstances with specificity, set
11 forth in detail the reasons why the disclosure to the Expert is reasonably necessary, assess the risk
12 of harm that the disclosure would entail, and suggest any additional means that could be used to
13 reduce that risk. In addition, any such motion must be accompanied by a competent declaration
14 describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of
15 the meet and confer discussions) and setting forth the reasons advanced by the Designating Party
16 for its refusal to approve the disclosure.

17 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of
18 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
19 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

20 8. PROSECUTION BAR

21 Absent written consent from the Producing Party, any individual who receives access to
22 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –
23 SOURCE CODE" information shall not be involved in the prosecution of patents or patent
24 applications relating to the patents-in-suit or relating to the subject matter of the disclosed materials
25 to the extent such materials describe business intelligence software, including without limitation
26 the patents asserted in this action and any patent or application claiming priority to or otherwise
27 related to the patents asserted in this action, before any foreign or domestic agency, including the
28 United States Patent and Trademark Office ("the Patent Office"). For purposes of this paragraph,

1 “prosecution” includes directly or indirectly drafting, amending, advising, or otherwise affecting
2 the scope or maintenance of patent claims. To avoid any doubt, “prosecution” as used in this
3 paragraph does not include representing a party challenging or defending a patent before a
4 domestic or foreign agency (including, but not limited to, a reissue protest, *ex parte* reexamination
5 or *inter partes* reexamination). This Prosecution Bar shall begin when access to “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
7 CODE” information is first received by the affected individual and shall end two (2) years after
8 final termination of this action.

9 9. SPECIAL PROTECTIONS FOR SOURCE CODE

10 (a) To the extent production of source code becomes necessary in this case, a
11 Producing Party may designate source code as “HIGHLY CONFIDENTIAL – SOURCE CODE” if
12 it comprises or includes confidential, proprietary or trade secret source code.

13 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE
14 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –
15 ATTORNEYS’ EYES ONLY” information, including the Prosecution Bar set forth in Paragraph 8,
16 and may be disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL –
17 ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and
18 7.4.

19 (c) Any source code produced in discovery shall be made available for
20 inspection, in a format allowing it to be reasonably reviewed and searched (which will be the same
21 format as the Producing Party provides any source code to its own experts), during normal business
22 hours or at other mutually agreeable times. All source code of MicroStrategy will be provided for
23 inspection in Quinn Emanuel’s Chicago or San Francisco offices, or another mutually agreed upon
24 location. All source code of VSi will be provided for inspection at Heim Payne & Chorush’s
25 Houston office, or another mutually agreed upon location. The source code shall be made available
26 for inspection on a secured computer in a secured room without Internet access or network access
27 to other computers, and the Receiving Party shall not copy, remove, or otherwise transfer any
28 portion of the source code onto any recordable media or recordable device. For avoidance of any

1 doubt, the Receiving Party and its representatives may have access to their own computer while
2 reviewing source code, and the computer may be connected to the Internet. The receiving party
3 must provide 14 days' notice before the initial inspection of the source code for any product. For
4 any source code that has previously been inspected, the receiving party must provide 7 days' notice
5 if it would like to review the source code in a different mutually agreeable location than where the
6 initial source code inspection occurred. For subsequent inspections of previously inspected source
7 code at the same location where that source code was previously inspected, the receiving party
8 need only provide 3 business days' notice. Any source code inspections that occur in connection
9 with this litigation prior to the entry of this protective order constitute an initial inspection for the
10 purposes of this provision.

11 (d) The Receiving Party may request paper copies of limited portions of source
12 code that are reasonably necessary to facilitate the Receiving Party's preparation in this Litigation,
13 including to prepare court filings, pleadings, expert reports, or other papers, or for deposition or
14 trial; to prepare internal attorney work product materials; or to prepare other necessary case
15 materials such as consulting expert written analyses and related drafts and correspondence. The
16 Receiving Party shall not request paper copies for the purposes of reviewing the source code other
17 than electronically as set forth in paragraph (c) in the first instance. The Producing Party shall
18 provide all such source code in paper form including bates numbers and the label "HIGHLY
19 CONFIDENTIAL - SOURCE CODE." The Producing Party may challenge the amount of source
20 code requested in hard copy form pursuant to the dispute resolution procedure and timeframes set
21 forth in Paragraph 6 whereby the Producing Party is the "Challenging Party" and the Receiving
22 Party is the "Designating Party" for purposes of dispute resolution.

23 (e) The Receiving Party shall maintain a record of any individual, other than
24 Outside Counsel of Record, who has inspected any portion of the source code in electronic or paper
25 form. The record shall include the inspecting individual's name and the date of initial inspection
26 for the portion of source code. The Receiving Party shall maintain all paper copies of any printed
27 portions of the source code in a secured, locked area. The Receiving Party shall not create any
28 electronic or other images of the paper copies and shall not convert any of the information

1 contained in the paper copies into any electronic format, except for use in an expert report. The
 2 Receiving Party shall only make additional paper copies if such additional copies are (1) necessary
 3 to prepare court filings, pleadings, or other papers (including a testifying expert's expert report),
 4 (2) necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper
 5 copies used during a deposition shall be retrieved by the Producing Party at the end of each day and
 6 must not be given to or left with a court reporter or any other individual.

7 (f) Nothing in this Protective Order shall be construed to limit how a Producing
 8 Party may maintain the material it has designated "HIGHLY CONFIDENTIAL – ATTORNEYS'
 9 EYES ONLY – SOURCE CODE."

10 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 11 LITIGATION

12 If a Party is served with a subpoena or a court order issued in other litigation that
 13 compels disclosure of any information or items designated in this action as "CONFIDENTIAL," or
 14 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –
 15 SOURCE CODE" that Party must:

16 (a) promptly notify in writing the Designating Party. Such notification shall include
 17 a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to issue in
 19 the other litigation that some or all of the material covered by the subpoena or order is subject to
 20 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

21 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
 22 Designating Party whose Protected Material may be affected.

23 If the Designating Party timely seeks a protective order, the Party served with the
 24 subpoena or court order shall not produce any information designated in this action as
 25 "CONFIDENTIAL," or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or
 26 "HIGHLY CONFIDENTIAL – SOURCE CODE" before a determination by the court from which
 27 the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The
 28 Designating Party shall bear the burden and expense of seeking protection in that court of its

confidential material. Nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as "CONFIDENTIAL," or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE". Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall, after entry of this Order:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and
3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party shall produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed

Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

If information is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return or destroy the specified information and any copies it has and may not sequester, use or disclose the information until the claim is resolved. This includes a restriction against presenting the information to the court for a determination of the claim.

14. MISCELLANEOUS

14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

14.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a

1 sealing order will issue only upon a request establishing that the Protected Material at issue is
2 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a
3 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d)
4 and General Order 62 is denied by the court, then the Receiving Party may file the Protected
5 Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by
6 the court.

7 14.4 Expert Discovery. The parties agree that expert discovery will be governed by the
8 default limitations contained in the Federal Rules of Civil Procedure and that communications with
9 experts will not be discoverable unless expressly relied on by a testifying expert.

10 15. FINAL DISPOSITION

11 Within 60 days after the final disposition of this action, as defined in paragraph 4,
12 each Receiving Party must return all Protected Material to the Producing Party or destroy such
13 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
14 compilations, summaries, and any other format reproducing or capturing any of the Protected
15 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit
16 a written certification to the Producing Party (and, if not the same person or entity, to the
17 Designating Party) by the 60-day deadline that all the Protected Material was returned or destroyed
18 and affirms that the Receiving Party has not retained any copies, abstracts, compilations,
19 summaries or any other format reproducing or capturing any of the Protected Material.
20 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,
21 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
22 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
23 product, even if such materials contain Protected Material. Any such archival copies that contain or
24 constitute Protected Material remain subject to this Protective Order as set forth in Section 4
25 (DURATION).

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 Dated: April 5, 2012

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29 Dated: April 5, 2012

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 DATED: 4/5/12

A handwritten signature in blue ink, appearing to read "Richard Seeborg", is written over a horizontal line.

3 [Hon. Richard Seeborg]

4 United States District Court Judge

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EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury that I have read
 in its entirety and understand the Stipulated Protective Order that was issued by the United States
 District Court for the Northern District of California in the case of *Vasudevan Software, Inc. v.*
MicroStrategy Inc., Case No. 3:11-06637-RS. I agree to comply with and to be bound by all the
 terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
 promise that I will not disclose in any manner any information or item that is subject to this
 Stipulated Protective Order to any person or entity except in strict compliance with the provisions
 of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone number]
 as my California agent for service of process in connection with this action or any proceedings
 related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]